

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caroline Moses	Team: Squad #13	CCRB Case #: 201904546	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/22/2019 10:21 AM	Location of Incident: East 135th Street and Lincoln Avenue	Precinct: 40	18 Mo. SOL 10/22/2020	EO SOL 6/8/2021	
Date/Time CV Reported Sat, 05/25/2019 4:49 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 05/25/2019 4:49 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ivan Luciano	05398	958845	040 PCT
2. POM Michael Brito	25327	941458	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ivan Luciano	Abuse: Police Officer Ivan Luciano threatened § 87(2)(b) with the use of force.	
B.POM Ivan Luciano	Force: Police Officer Ivan Luciano used physical force against § 87(2)(b)	
C.POM Michael Brito	Force: Police Officer Michael Brito used physical force against § 87(2)(b)	
D.POM Ivan Luciano	Abuse: Police Officer Ivan Luciano searched § 87(2)(b)	

On May 25, 2019, § 87(2)(b) filed this complaint via the CCRB's website.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Findings and Recommendations

It is undisputed that PO Luciano and PO Brito stopped § 87(2)(b)'s car. PO Luciano approached the driver's side of § 87(2)(b)'s car and PO Brito approached the passenger side of the car. PO Luciano ordered § 87(2)(b) to produce his driver's license, registration, and insurance information. § 87(2)(b) asked why he had been pulled over. PO Luciano again ordered § 87(2)(b) to produce his driver's license, registration, and insurance information. § 87(2)(b) asked again why he was being pulled over. PO Luciano and § 87(2)(b) continued to argue for approximately five minutes. § 87(2)(b) alleged that PO Luciano then said to him, "You have three seconds before I punch you in your face" (Board Review 04).

PO Luciano's body-worn camera footage captured this portion of the incident and reveals that PO Luciano did not threaten to punch § 87(2)(b) in the face. (Board Review 01). At the 4:22 timestamp on the video player, visible at the bottom of the screen, PO Luciano says, "I'm two seconds away from pulling this guy out."

§ 87(2)(g)

Allegation (B) Force: Police Officer Ivan Luciano used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Michael Brito used physical force against § 87(2)(b)

It is undisputed that PO Luciano and PO Brito opened the unlocked door to § 87(2)(b)'s car, pulled § 87(2)(b) from the car, and placed him in handcuffs after he failed to comply with repeated orders to provide his driver's license, registration, and insurance information. § 87(2)(b) did not sustain any injuries or seek medical attention related to this incident.

PO Luciano and PO Brito both said that prior to pulling § 87(2)(b) from the car, they ordered him to get out of the car, which is corroborated by PO Luciano's body-worn camera footage (Board Review 01, beginning at the 4:53 timestamp). It was after § 87(2)(b) refused to comply with PO Luciano's order to get out of the car that PO Luciano and PO Brito pulled § 87(2)(b) from the car. § 87(2)(b) was not doing anything else that prompted PO Luciano and PO Brito to remove him from the car. PO Brito said that when § 87(2)(b) was ordered to get out of the car, he visibly stiffened his body, and that he stopped tensing his body once removed from the car. PO Brito suspected that § 87(2)(b) did not want to provide his identification because his license was suspended. In PO Brito's experience, when someone refuses to provide identification, it is often because their license is suspended or they have an outstanding warrant.

NYPD Patrol Guide, Procedure 221-01 states that officers "will use only the reasonable force necessary to gain control or custody of a subject" (Board Review 07). NYPD Patrol Guide, Procedure 209-09 states that someone who has committed a traffic violation should be transported to the stationhouse "if doubt concerning identity exists" (Board Review 08).

§ 87(2)(g)

[REDACTED]

Allegation (D) Abuse of Authority: Police Officer Ivan Luciano searched § 87(2)(b)

PO Luciano's body-worn camera footage captures PO Luciano searching a handcuffed § 87(2)(b)'s left front pants pocket and removing § 87(2)(b)'s wallet from said pocket. PO Luciano hands the wallet to PO Brito. PO Brito removes § 87(2)(b)'s driver's license from the wallet and hands it to PO Luciano. PO Luciano says, "As you can see, we've pulled out your license, here is your wallet, I'm going to put it back in your pocket" (Board Review 01, beginning at the 5:55 timestamp, visible at the bottom of the screen). At the 7:45 timestamp, PO Luciano says, "You're currently being detained while we figure out why it is you did not want to provide us with your identification. As long as you're driving with a valid license, we'll issue you a summons and you can go on your way" (Board Review 01, beginning at the 7:45 timestamp). PO Brito runs § 87(2)(b).

§ 87(2)(b)'s driver's license and tells PO Luciano that it is valid. PO Luciano calls a supervisor on the phone and confers about transporting § 87(2)(b) to the 40th Precinct stationhouse, then tells PO Brito that they have to transport § 87(2)(b). PO Luciano conducts a second search of § 87(2)(b) that takes place approximately nine minutes later, just prior to § 87(2)(b) being placed inside of the patrol car (Board Review 01, beginning at the 15:24 timestamp). The later search includes a frisk of § 87(2)(b)'s arms, legs, and waistband, and the removal of § 87(2)(b)'s keys from his left front pants pocket. § 87(2)(b) is ultimately transported to the 40th Precinct stationhouse.

PO Luciano said he intended to arrest § 87(2)(b) and bring him back to the stationhouse from the moment he removed § 87(2)(b) from his car (Board Review 05). PO Luciano searched § 87(2)(b) incident to § 87(2)(b)'s arrest, in anticipation of placing him inside the patrol car. PO Luciano reasoned that both searches captured on BWC were incident to § 87(2)(b)'s arrest and were done for officer safety prior to placing § 87(2)(b) inside of the patrol car. PO Luciano explained that the second search was to ensure he had not missed anything during the first search (Board Review 15).

PO Luciano acknowledged making the statement about issuing § 87(2)(b) a summons and sending him on his way that is captured on the BWC, but he clarified that he did not necessarily mean the summons would be issued at the scene of the car stop. PO Luciano said § 87(2)(b) could have been arrested at the time for Obstructing Governmental Administration. PO Luciano first said he called his supervisor after § 87(2)(b) was already under arrest to confirm that he should bring § 87(2)(b) to the stationhouse. He later said he called his supervisor for guidance because the situation was "weird."

PO Brito stated that at the time PO Luciano searched § 87(2)(b) PO Brito was not sure whether § 87(2)(b) would be arrested or released with a summons, though he was certain that some police action would be taken (Board Review 06).

People v. Reid (24 NY.3d 615, 2014) allows police officers to search an individual incident to lawful arrest if and only if it is the officers' actual intention to arrest that individual (Board Review 10). NYPD Patrol Guide, Procedure 208-05 requires police officers to perform a frisk and to remove any objects found in the course of that frisk whenever someone is handcuffed with the intention of arresting that person before placing them in a patrol car (Board Review 11).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED].

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 12).
- PO Luciano has been a member of the NYPD for four years, and this is the first CCRB complaint in which he has been a subject.
- PO Brito has been a member of the NYPD for 13 years, and this is the first CCRB complaint in which he has been a subject.

Mediation, Civil and Criminal Histories

- On June 27, 2019, this case was sent to mediation. On September 12, 2019, it was returned for an investigation.
- As of October 15, 2019, § 87(2)(b) [REDACTED] has not filed a Notice of Claim with the New York City Office of the Comptroller regarding this incident (Board Review 14).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____

Signature

Print Title & Name

Date

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